IN THE

Supreme Court of the United States

July Term, 1978

NO. 78-39

JOSEPH A. ZRENCHIK, et. al., Appellants
v.
PEOPLES' COMMUNITY HOSPITAL AUTHORITY,
Appellees

On Appeal From The Supreme Court Of Michigan

JURISDICTIONAL STATEMENT

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INDEX TO AUTHORITIES

STATUTES

IN THE

Supreme Court of the United States

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NO.....

JOSEPH A. ZRENCHIK, et. al., Appellants
v.
PEOPLES' COMMUNITY HOSPITAL AUTHORITY, Appellees

On Appeal From The Supreme Court Of Michigan

JURISDICTIONAL STATEMENT

Plaintiff appeals from the order of the Supreme Court of the State of Michigan denying application for leave to appeal, and submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that a substantial federal question is involved.

OPINION BELOW

The order of the Wayne County Circuit Court, granting summary judgment to the Defendant, is not reported. The *per curiam* decision of the Michigan Court of Appeals, (NO. 77-432) affirming the decision of the Wayne County Circuit Court, is not reported. The order of the Michigan Supreme Court denying application of leave to appeal (CR-22-275) is not yet reported. These opinions are set forth in Appendix B.

JURISDICTION

This appeal is brought under 42 USC 1983 to reverse a decision of the Michigan Court of Appeals, upholding the constitutionality of Defendant's right to levy a 20% surcharge on patients who are nonresidents of the constituent communities. The decision of the Court of Appeals was rendered on January 10, 1978, and notice of leave of application to appeal to the Michigan Supreme Court was filed on January 30, 1978. The order of Michigan Supreme Court, denying application of leave to appeal was handed down on April 5, 1978, and notice of appeal to the United States Supreme Court was filed with the Michigan Court of Appeals on June 28, 1978. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment of the Michigan Court of Appeals. *Barrows* v *Jackson,* 73 S. Ct, 1031; 346 US 249; 97 L Ed 1586 (1953), *Vlandis* v *Kline,* 412 US 441; 93 S Ct 2230; 37 L Ed 2nd 63 (1973).

QUESTIONS PRESENTED

1. **Is the right to medical care a fundamental right, so that any state action that impinges on that right requires proof of a compelling state interest?**

2. **Does Defendant's 20% surcharge, which is levied against nonresident patients only, create an arbitrary and discriminatory classification in violation of the Equal Protection Clause of the United States Constitution?**

3. **Does the surcharge create an irrebuttable presumption in violation of the Due Process Clause?**

4. **Does Plaintiff have standing to raise the claims of nonresident property owners?**

STATEMENT OF FACTS

The following statement of facts is undisputed. (Reference to facts set forth in Defendant's Brief are designated by the leter "D" followed by the page number enclosed by parentheses.)

Plaintiff Hospital Authority was created pursuant to 1945 PA 47 which permits a group of cities, villages or townships to create a hospital authority for the purpose of owning and operating hospitals (MCLA 331.1) Section 4 of the Act (MCLA 331.4) provides that the cities, villages and townships creating the hospital authority shall have the right to raise annually by a tax to be levied on the taxable property within their respective jurisdictions a sum of money to be used for community hospitals in an amount not to exceed 4/10 of 1 mill on each dollar of assessed valuation. Defendant Hospital Authority is a state agency.

On October 17, 1957, the Defendant Hospital Authority's board of directors ruled that each of its four hospitals would charge all patients who are not residents of any of its constituent communities an additional charge of 20% of their hospital bill which would not be charged a patient who was a resident of any of said communities. The alleged purpose of the surcharge is ". . . to equalize or offset the

additional 4/10 mill paid by residents that is not paid by nonresident patients."

Plaintiff was a patient at Annapolis Hospital, one of Defendant's four hospitals, during the period of December 6, 1974 through December 18, 1974, which was an emergency admission required by a blood clot in an artery of his left leg. Plaintiff's wife, Sandra Zrenchik, executed all of the hospital admission forms required by Defendant. Plaintiff was not aware of the contents of the forms signed by his wife. Plaintiff's wife signed the following statement which was included as part of the Defendant hospital's admission forms; and which was part of the same instrument which contained the guaranty of payment which she signed "in blank". The said statement provides:

> "I understand that, as the resident of a community that is not a member of the Peoples Community Hospital Authority, I am liable and I agree to pay a surcharge in the amount of 20% of my hospital bill."

No explanation or statement was ever made to Plaintiff or Plaintiff's wife that signing the aforementioned statement constituted a waiver of their constitutional right to be treated at the said hospital without paying the said surcharge.

The said surcharge was automatically charged to the nonresident patients without inquiring of said patients whether or not they owned taxable property within any of Defendant's constituent communities.

The question of whether the Defendant's surcharge is a violation of the Equal Protection Clause of the United States Constitution was raised in Plaintiff's Motion for

Summary Judgment, Brief, and in oral arguments. The question of whether a 20% surcharge on nonresidents is a violation of the Equal Protection Clause was also raised on appeal to the Michigan Court of Appeals, both in the Briefs and the oral arguments. The Michigan Court of Appeals affirmed the Circuit Court's decision holding that there was a rational basis for the surcharge, and that a distinction based on residency is valid. (Court of Appeals decision, p. 3). In the words of the Court of Appeals:

> "There is a substantial relationship between the resident/nonresident distinction and the differing rates. Plaintiff's complaint only challenged the validity of a surcharge based on residency. But residency requirements, standing alone, are not a denial of Equal Protection. See *Vlandis* v *Kline*, 412 US 441; 93 S Ct 2230; 37 L Ed 2nd 63 (1973)."

This ruling by the Court of Appeals, holding that a surcharge based on residency status is valid, and that it did not violate Plaintiff's right to equal protection of the law, is of a nature to bring the case within Title 28, United States Code, Section 1257(2), which confers jurisdiction on the United States Supreme Court.

The Questions Are Substantial

The 14th Amendment mandates that no state shall deny to any person within its jurisdiction the equal protection of the law. The Equal Protection Clause requires that persons who are equally situated receive equal treatment from the state. Defendant is a state agency. When the Defendant Peoples Community Hospital Authority denies equal protection to some patients, the State of Michigan denies equal protection of the law to persons within its jurisdiction.

The Plaintiff argues that the right to medical care is a fundamental right, just like the right to vote, the right to travel, the right to privacy, and the rights enumerated in the Bill of Rights. Since the right to medical care is necessary to sustain life, the right to such care should be viewed as a fundamental right. Since a person cannot fully pursue the blessings of liberty unless he is healthy, the right to medical care is fundamental to liberty. Because the right to medical care is necessary to sustain both life and liberty, it should be included among the fundamental rights, upon which a state may not infringe unless a compelling state interest is involved.

In *Memorial Hospital* v *Maricopa Co.*, 415 US 250; 94 S Ct 1076; 39 L Ed 2d 305 (1974), the United States Supreme Court recognized the importance of medical care, although the precise holding of the case turned on the fundamental right to travel. At 415 US at p 259, the Court stated:

> Whatever the ultimate parameters of the Shapiro penalty analysis, it is at least as clear that medical care is as much "a basic necessity of life" to an indigent as medical assistance.

Although Plaintiff is not indigent, medical care is as important to those who are notindigent as it is to those who are. In fact, since the indigent have the assistance of the Medicaid Program, the problem of paying for adequate medical care is a greater burden on the non-indigent than on the indigent. Thus, a fundamental right is involved, upon which the Defendant may not infringe unless there is a showing of a compelling state interest. The Plaintiff asks that the Supreme Court declare that medical care is a fundamental right.

The fundamental right to travel is also involved in this case. Defendant's surcharge on nonresident patients has

a chilling effect on that right. By imposing a surcharge on nonresidents, Defendant discourages residents of its constituent communities from moving to non-constituent communities, for fear that they may be charged a surcharge for hospital care. Whether or not residents of constituent communities are actually deterred from moving is immaterial. It is not necessary to show that residents have actually been deterred from moving or travelling, but only that the classification serves to deter the exercise of the fundamental right to travel.

The Defendant's surcharge creates an unreasonable classification between residents and nonresidents in violation of the Equal Protection Clause of the United States Constitution. Defendant's 20% surcharge is intended to offset a 4/10 mill property tax assessed against the owners of property located within the constituent communities. Nevertheless, the surcharge is assessed against nonresidents, not non-owners, of property. This resident-nonresident classification is arbitrary and discriminatory, in violation of equal protection principles. Plaintiff has argued in the state courts that the interest affected by the surcharge is a fundamental interest involving the rights to travel and/or to medical care, and that Defendant must show a compelling state interest to sustain the surcharge. Plaintiff still contends this.

But even if there is no fundamental interest involved, the Defendant's use of residency as a basis for the surcharge is arbitrary and discriminatory, constituting a denial of equal protection to nonresidents. Nonresidents are automatically charged 20% of their hospital bill as a surcharge, while residents are automatically free from the surcharge. The Defendant does not determine whether residents or

nonresidents actually own property within the Defendant's communities, or how in property taxes they pay, if any.

Defendant's classification creates two conclusive presumptions: (1) that all residents own property of equal value or feel the burden of property taxes equally within the member communities; and (2) that no nonresident own property within the member communities, or feel the burden of the property tax. These presumptions lead to the following unwarranted results:

(1) A family of 5 living in a $40,000 home will pay $8.00 per year in taxes because of the 4/10 mill property tax. Plaintiff's surcharge of $295 represents 37 years of such payments.

(2) A resident who has just moved into a constituent community would pay no surcharge, even though he or she has yet to pay any property tax.

(3) A resident of 20 years who has just moved outside a constituent community would pay the surcharge even though he or she has paid property taxes for 20 years.

(4) A large resident family pays no surcharge even though it may have made great use of Defendant's facilities, while a single individual nonresident pays a 20% surcharge even if he uses the Defendant's facilities just once.

Thus, the surcharge bears no reasonable relationship to Plaintiff's or other nonresidents', use of Defendant's facilities.

Irrebuttable presumptions have been invalidated by the United States Supreme Court in similar situations. For

example, in *Vlandis* v *Kline*, 412 US 441, 93 S. Ct. 2230, 37 L. Ed 2d 63 (1973), the Court struck down Connecticut's method of implementing the in-state tuition preference. There the Court held Connecticut's irrebuttable presumption of non-residency so long as the student remained a full time student unconstitutional. The Court held that the individual was entitled to an opportunity to present evidence showing that he was a bona fide resident. In the instant case, the Defendant affords a patient no opportunity to show that he has paid property taxes towards the Defendant's Hospital Authority.

Plaintiff has standing to raise the claims of nonresidents who own property within the Defendant's constituent communities; even though Plaintiff is not a non resident property owner in a constituent community. Since Plaintiffs are not nonresident property owners, they are not members of the specific class discriminated against—nonresident property owners. However, Plaintiffs have been injured economically by the surcharge—an injury not suffered by the public at large or all taxpayers. Plaintiffs have been assessed a 20% surcharge which Defendants are endeavoring to collect. The discriminatory scheme does affect Plaintiffs because if the scheme improperly excludes residents who have not borne the burden of the property tax (those residents who have just moved in to a constituent community), then the burden imposed on all nonresident users to compensate for those exempted will be greater than if the surcharge is equally applied to all those who have not paid property taxes.

Plaintiff has standing to represent nonresident property owners who have paid taxes, but are still subject to the surcharge. Where a denial of equal protection is alleged, a plaintiff has standing to represent those who are

harmed by such denial of equal protection, even though Plaintiff is not a member of that class.

In *Pierce* v *Society of Sisters of Holy Name,* 268 US 510; 45 S Ct 571; 69 L Ed 1070 (1924), the Society was a religious association organized to care for orphans and to educate youth. It ran several parochial schools. The Society attacked the validity of an Oregon Statute which required all students to attend public schools until age 16. The Society was economically injured by the law since students could not attend its private schools. The Court ruled that the statute violated the rights of *parents* or *guardians* to educate their children under their control. Thus, the *Society* was allowed to raise the claims of parents and guardians.

In *Barrows* v *Jackson,* 346 US 249; 73 S Ct 1031; 97 L Ed 1586 (1953), Petitioner was a Defendant in a suit at law for damages due to Petitioner's breach of a racially restrictive covenant. Petitioner had sold to blacks in violation of such a covenant, and argued that the covenant violated equal protection of the law. Petitioner was not black. The Court found that Petitioner had standing to represent the claims of blacks who were harmed by the covenant.

In *Swann* v *Adams,* 385 US 447; 87 S Ct 569; 17 L Ed 2d 501 (1967) the Petitioner challenged the constitutionality of the apportionment scheme for Florida. Petitioner was a resident of Dade County and conceeded that the plan was constitutional as to Dade County. The Court held that Petitioner still had standing to bring in a different plan that would have affected Dade County differently (but also constitutionally) and which would have affected the constitutionality of the apportionment plan for other counties.

In *Peters* v *Kiff,* 407 US 493; 92 S Ct 2163; 33 L Ed 2d 83 (1972), Petitioner was a white Defendant in a jury trial and was permitted to challenge the exclusion of blacks from the Grand and Petit Jury panels. The Court found that the discriminatory action was invalid and that Petitioner was harmed, even though it would primarily tend to be prejudicial to blacks.

In *Trafficante* v *Metropolitan Life Insurance Co.,* 409 US 205; 93 S Ct 364; 34 L Ed 2d 415 (1972), a white tenant was allowed standing to raise the issue of discrimination against blacks in housing policies of the Defendant under the Civil Rights Act of 1968. The Petitioner was harmed in a different way than the blacks were, in that he was denied the right of association with blacks. Blacks were denied the right of access to housing.

In the case at bar, Plaintiff has been injured by the increased burden of the surcharge that has resulted from the discrimination against nonresident property owners, and in favor of residents who do not bear the property tax burden. Nonresident property owners are similarly injured, but they are more severly discriminated against, by having to pay the property tax as well as the surcharge.

Plaintiff has a sufficient interest at stake to vigorously air the discrimination issue on behalf of all nonresidents. The mere fact that the case at bar is a class action, indicates that Plaintiff can represent the interests of all nonresidents, including nonresident owners of property. Here Plaintiff can adequately represent and has standing to represent all nonresidents in contesting the validity of a surcharge on several grounds, even though one of those grounds discriminates more severely against nonresident property owners.

It is submitted that the decision of the Michigan Court of Appeals fails to recognize that a distinction based on residency is invalid, and denies equal protection of the law to nonresidents. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,
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APPENDIX A

MCLA 331.1

Two or more cities, or townships, or a combination thereof, by resolution of their respective legislative bodies, approved by a majority vote of their qualified electors, may join to form a hospital authority and issue bonds for the purpose of planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating, either within or without their limits, 1 or more community hospitals, subject to the tax limitation provided in this act.

MCLA 331.2

The hospital authority shall be a body corporate with power to sue or be sued in any court of this state and shall have the power to exercise any powers necessary and incident to the acquisition, construction, improvement, enlargement, extension, ownership, maintenance, and operation of 1 or more community hospitals. It may contract with any of the participating cities, villages, and townships, or any other city, village, or township, or with any county department of social welfare, for the hospital care of indigent patients and other persons entitled to such care at public expense. It may contract with any individual, firm, or corporation for the furnishing of hospital care to persons at the private expense of the individual, firm, or corporation. It may establish rules providing for a system of civil service for its employees.

MCLA 331.4

The legislative bodies of the cities, villages, and townships belonging to the hospital authority may annually raise by a tax, to be levied on the taxable property within

their respective jurisdictions, a sum of money to be used to assist in planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating community hospitals authorized by this act. The annual tax authorized in this section shall not exceed 4/10 of 1 mill of the state equalized valuation on each dollar of assessed valuation in each city, village, or township in the authority.

MCLA 331.6

The board shall adopt bylaws, rules, and policies governing the operation and professional work of the hospital and the eligibility and qualifications of its medical staff. Physicians, nurses, attendants, employees, patients, and persons approaching or on the premises of the hospital and furniture, equipment and other articles used or brought on the premises shall be subject to the bylaws, rules, and policies as the hospital board may adopt or authorize to be adopted.

MCLA 331.8i

Free service may not be furnished by a hospital, the revenues of which are pledged for the payment of bonds, to a person, firm, or corporation, public or private, or to a public agency or instrumentality. The reasonable cost and value of a service rendered to a public agency, including a member city, township, or village, shall be paid for as the service accrues from its current funds and the charges when so paid shall be accounted for in the same manner as other revenues of the hospitals. Rates for services furnished by a hospital, the revenues of which are pledged for the payment of bonds, shall be fixed precedent to the issuance of the bonds. The rates shall be sufficient

to provide for the payment of the expenses of administration, operation, and maintenance of the hospital as may be necessary to preserve the same in good repair and working order. The rates shall be sufficient to provide for the payment of principal of and interest on the bonds payable from the revenues of the hospital, as, and when, the same become due and payable, taking into account, however, amounts assessed or to be assessed against a member city, township, or village as provided in this act, and for the creation of any reserve for the payment of principal and interest as required in the resolution. The rates shall be sufficient to provide for such other expenditures and funds for the hospital as the resolution may require. The rates shall be fixed and revised from time to time by the hospital authority board so as to produce these amounts, and the hospital authority board shall covenant and agree in the resolution authorizing the issuance of the bonds, and on the face of each bond, to maintain at all times such rates for services furnished by such hospitals as shall be sufficient to provide for the foregoing. Rates charged for the services furnished by a hospital, the revenues of which are pledged for the payment of bonds under this act, shall not be subject to approval by any state, bureau, board, commission, or like instrumentality or agency thereof.

APPENDIX B

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH A. ZRENCHIK, for himself and on behalf of all persons who were (A) non-residents of the communities constituting Defendant, and (B) patients of any of the hospitals opreated by Defendant,
Plaintiff-Appellant,
-v-
PEOPLES COMMUNITY HOSPITAL AUTHORITY, a public corporation,
Defendant-Appellee

No. 77-432

BEFORE: D. C. Riley, P.J., D. F. Walsh and A. C. Miller, JJ. PER CURIAM

On December 2, 1975, and December 29, 1976, the defendant secured summary judgment on plaintiff's suit against the defendant for charging non-resident users of the defendant's hospitals 20 per cent more than resident users of the defendant's hospitals. The plaintiff appeals by right under GCR 1963, 806.1. The plaintiff raises two arguments on appeal.

The first question is whether or not the Peoples Community Hospital Authority has the power to charge non-resident users a regular fee plus a surcharge for services rendered to non-resident users by a community hospital. Phrased a bit more narrowly, the queston becomes: is the surcharge a tax which the defendant admits it cannot impose?

The Peoples Community Hospital Authority was established pursuant to 1945 PA 47 (MCLA 331.1 *et seq;* MSA 5.2456(1) *et seq*). The title of this act indicates that the act authorizes, among other things, two or more cities, townships and villages to maintain and operate one or more community hospitals and grants to the authority certain powers of a body corporate.

1945 PA 47, *supra,* § 2 authorizes the authority to contract with an individual, firm or corporation for the furnishing of hospital care to persons at the private expense of the individual, firm or corporation. Such authorization implicitly includes the power to set rates in such a contract. In addition, 1945 PA 47, *supra,* § 6 states in part:

> ". . . The board shall adopt bylaws, rules and policies governing the operation . . . of the hospital . . . (P)atients . . . on the premises of the hospital . . . shall be subject to such bylaws, rules and policies as the hospital may adopt. . . ."

Also, 1945 PA 47, *supra,* § 8i specifically authorizes the defendant to set rates which are sufficient to cover all hospital expenses.

The plaintiff claims that the surcharge is a tax. The defendant claims that the surcharge offsets residential hospital taxes and is no more than a legitimate exercise of its rate-setting power. We agree with the defendant.

In *Foreman* v *Oakland County Treasurer,* 57 Mich App 231 (1974), the plaintiff argued, among other things, that the Probate Code's administrative fees statute was an unauthorized tax and therefore unconstitutional. This Court relied upon the rule set forth in *Vernor* v *Secretary of State,* 179 Mich 157, 168; 146 NW 338; 342 (1914):

> "... statutorily enacted fees are presumed reasonable, but may be found constitutionally infirm, if they bear no reasonable relationship to the expense for which they are chargeable."*

To avoid being a tax, the non-resident fees (resident fee plus 20 per cent surcharge) must bear a reasonable relationship to the services which non-residents receive. In the present case, the 20 per cent surcharge is intended to offset the residents' hospital taxes. The 20 per cent surcharge only brings the hospital rates up to their actual level. The non-resident rate represents full payment by the non-resident for specific services rendered by the hospital. The resident rate also equals full payment by a resident because the community has already paid additional money to support the hospital and a resident is part of the community.

The fees bear a reasonable relationship to the expense for which they are chargeable and are not a tax.

The second question is: does the surcharge violate principles of equal protection merely because it is based on a resident/non-resident distinction?

The Attorney General's assessment of this issue was correct:

> "The rational basis for surcharging nonresident patients can be found in 1945 PA 47, *supra*, § § 4 and 7. These sections authorize cities, townships and villages composing the hospital authorities to levy taxes on their property to fund the construction and operation of the Hospital Authority. Non-resident patients

* A "reasonable return" and "proprietary interest" can be considered in assessing different rates to non-resident water users. *City of Detroit* v *City of Highland Park*, 326 Mich 78 (1949) and *Township of Meridian* v *City of East Lansing*, 342 Mich 734 (1955).

> are not subject to these taxes. Thus, the surcharge requires non-residents to pay an amount which more closely approximates the true cost of services. To provide service at the same rate to both residents and non-residents would constitute a subsidy for non-residents at the expense of the residents.
>
> "Cases concerning non-resident student tuition at colleges and universities have not prohibited classifying students as residents and non-residents and requiring non-residents to pay higher tuition and fees than residents. *Vlandis* v *Kline*, 412 US 441; 93 S Ct 2230; 37 L Ed 2d 63 (1973). What was attacked in *Vlandis* v *Kline, supra*, was the creation of permanent and irrebuttable presumptions of non-residence when the presumption is not necessarily universally true." OAG 5105, October 5, 1976.

There is a substantial relationship between the resident/non-resident distinction and the differing rates. Plaintiff's complaint only challenged the validity of a surcharge based on residency. But residency requirements, standing alone, are not a denial of equal protection. See *Vlandis, supra*. Plaintiff's belated attempt to expand the challenge comes too late.

AFFIRMED.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 5th day of April in the year of our Lord one thousand nine hundred and seventy-eight.

Present the Honorable
THOMAS GILES KAVANAGH;
Chief Justice.
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
MARY S. COLEMAN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR,
Associate Justices.

CR 22-275

JOSEPH A. ZRENCHIK, for himself and on behalf of all persons who were (A) non-residents of the communities constituting Defendant, and (B) patients of any of the hospitals operated by Defendant,

Plaintiff-Appellant,

v 60964

PEOPLES COMMUNITY HOSPITAL AUTHORITY, a public corporation,

Defendant-Appellee.

COA 77-432
LC 75-059-652-CZ

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

Moody, Jr., J., not participating.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 5th day of April in the year of our Lord one thousand nine hundred and seventy-eight.

/s/ CORBIN R. DAVIS
Deputy Clerk.

STATE OF MICHIGAN
IN THE SUPREME COURT

JOSEPH A. ZRENCHIK, for himself and on behalf of all persons who were (A) non-residents of the communities constituting Defendant, and (B) patients of any of the hospitals operated by Defendant,

Plaintiff-Appellant,

v

PEOPLES COMMUNITY HOSPITAL AUTHORITY, a public corporation,

Defendant-Appellee.

NO. CR 22-275
COA 77-432
LC 75-059-652-CZ

APPENDIX C

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that JOSEPH A. ZRENCHIK,

et. al., the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Michigan denying leave to appeal entered in this action on April 5, 1978.

This appeal is taken pursuant to 28 USC 1257(2).

2. The following questions are presented by this appeal:

(a) Is the right to medical care a fundamental right, so that any state action that impinges on that right requires proof of a compelling state interest?

(b) Does Defendant's 20% surcharge, which is levied against nonresident patients only, create an arbitrary and discriminatory classification in violation of the Equal Protection Clause of the United States Constitution?

(c) Does the surcharge create an irrebuttable presumption in violation of the Due Process Clause?

(d) Does Plaintiff have standing to raise the claims of nonresident property owners?

CALVIN KLYMAN, P.C.
By: /s/ CALVIN KLYMAN
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STATE OF MICHIGAN
IN THE COURT OF APPEALS

JOSEPH A. ZRENCHIK, for himself and on behalf of all persons who were (A) non-residents of the communities constituting Defendant, and (B) patients of any of the hospitals operated by Defendant,

Plaintiff-Appellant,

v

PEOPLES COMMUNITY HOSPITAL AUTHORITY, a public corporation,

Defendant-Appellee.

No. CR 22-275
COA NO. 77-432
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lation of the Equal Protection Clause of the United States Constitution?

(c) Does the surcharge create an irrebuttable presumption in violation of the Due Process Clause?

(d) Does the Plaintiff have standing to raise the claims of nonresident property owners?

CALVIN KLYMAN, P.C.
By: /s/ CALVIN KLYMAN
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JOSEPH A. ZRENCHIK, for himself and on behalf of all persons who were (A) non-residents of the communities constituting Defendant, and (B) patients of any of the hospitals operated by Defendant,

Plaintiff-Appellant,

v

PEOPLES COMMUNITY HOSPITAL AUTHORITY, a public corporation,

Defendant-Appellee.

No. CR 22-275
COA No. 77-432
LC No. 75-059-652-CZ

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

PAMELA S. PAPP, being first duly sworn, deposes and says that she is a secretary in the office of CALVIN KLY-

MAN, P.C., attorney of record for JOSEPH A. ZRENCHIK, et. al., Appellant herein, and that on the 28th day of June, 1978, she served a copy of the foregoing Notice of Appeal on the Supreme Court for the State of Michigan and on the Court of Appeals for the State of Michigan, and on B. Ward Smith, Esq., attorney for Appellee, by placing said copies in envelopes, postage prepaid, addessed to:

Clerk, Michigan Supreme Court, P.O. Box 30052, Lansing, Michigan 48909;

Clerk, Court of Appeals, 600 Washington Sq. Bldg., Lansing, Michigan 48933;

B. Ward Smith, Esq., Attorney at Law, 1427 Parklane Towers East, Dearborn, Michigan 48126.

/s/ PAMELA S. PAPP

Subscribed and sworn to before me
this 28th day of June, 1978.
/s/ PAMELA B. KORELITZ
Notary Public
Oakland County, Michigan
My commission expires: 6/16/82

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-39

JOSEPH A. ZRENCHIK, ET AL.,
Appellants,

v.

PEOPLES COMMUNITY HOSPITAL AUTHORITY,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

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962-8745 962-8746

TABLE OF CONTENTS

INDEX OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-39

JOSEPH A. ZRENCHIK, ET AL.,
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PEOPLES COMMUNITY HOSPITAL AUTHORITY,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS

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The Appellee moves the Court to dismiss the appeal herein on the ground that it is manifest that three questions presented were not timely presented in the Michigan State courts and the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE "STATUTE" INVOLVED AND THE NATURE OF THE CASE.

A. The State "Statute".

This appeal questions the validity of a policy resolution, adopted by the Board of Directors of Appellee on October 17, 1957, which provides that patients treated in hospitals operated by PEOPLES COMMUNITY HOSPITAL AUTHORITY who are not residents of one of its 24 constituent communities will be subject to a 20% surcharge.

Appellee's authority to adopt the policy resolution originates from 1945 PA 47 [MCLA 331.1 et seq.; MSA 5.2456(1) et seq.], the legislative enactment under which the Appellee is organized. This Act provides that two or more cities, villages or townships may join to form, maintain and operate one or more community hospitals. The resulting Hospital Authority has been determined to be a State agency, *Ecorse* v *Peoples Community Hospital Authority*, 336 Mich 490, 58 NW 2d 159 (1953).

Section 4 [MCLA 331.4; MSA 5.2456(4)] of Act 47 authorizes the legislative bodies of the cities, villages or townships belonging to the Hospital Authority to raise annually by a tax to be levied on the taxable property within their respective jurisdictions a sum of money to be used for community hospitals in an amount not to exceed 4/10 of 1 mill on each dollar of assessed valuation.

Section 2 [MCLA 331.2; MSA 5.2456(2)] of Act 47, expressly authorizes the Hospital Authority to contract with any individual, firm, or corporation for the furnishing of hospital care to persons at the private

expense of the individual, firm or corporation. Implicit in such authorization is the power to set rates in such a contract.

Section 8(i) [MCLA 331.8i; MSA 5.2456(8i)] of Act 47 mandates hospital rates for services to be established so as to provide for payment of expenses of administration, operation and maintenance and payment of principal and interest on bonds issued and outstanding.

The validity of 1945 PA 47 and the organization of PEOPLES COMMUNITY HOSPITAL AUTHORITY thereunder have been upheld by the Michigan Supreme Court; *Bullinger* v *Gremore*, 343 Mich 516, 72 NW 2d 777 (1955); *Peoples Community Hospital Authority* v *City of Ecorse*, 342 Mich 510, 70 NW 2d 749 (1955); *Ecorse* v *Peoples Community Hospital Authority, supra.*

The surcharge set by the Board of Directors of Appellee was done so pursuant to 1945 PA 47. The policy resolution was adopted as a rate setting measure to equalize or off-set the 4/10 mill paid by residents of participating communities. Patients residing in a community which is not a part of an "Authority" do not pay the additional millage.

There is no provision in Act 47 and no resolution or policy of Appellee Authority which denies medical care to any person.

B. Proceedings Below.

Appellant, in attempting to recover a surcharge paid to PEOPLES COMMUNITY HOSPITAL AUTHORITY (for medical services rendered) filed suit and attacked the charge on two grounds: (Appellant's Complaint, pp 2,3).

(1) that a surcharge of non-residents was an arbitrary classification depriving said persons of equal protection of the laws in violation of the Constitution of the United States and of the State of Michigan;

(2) that the statute under which the Authority was organized does not specifically authorize the surcharge.

Appellant and Appellee each filed a Motion for Summary Judgment with supporting briefs. After oral arguments and consideration by the trial court an Opinion was issued granting the Appellee's Motion for Summary Judgment.

Appellant then filed a Motion for Rehearing stating (Appellant's Motion for Rehearing, p 2):

(1) the Court did not consider the issue that the Appellee had no statutory authority to levy the surcharge;

(2) the Court did not consider the issue that no procedure was established by the Appellee to determine whether or not patients owned taxable property within the jurisdiction served by the defendant Authority; [this issue was not pleaded and Appellant admits he owns no taxable property in any member community];

(3) that the Court erred in determining that the levy of the surcharge did not constitute a denial of equal protection of the laws.

The trial court carefully considered and rejected all issues raised by Appellant on the rehearing.

Appellant appealed to the Michigan Court of Appeals. On January 10, 1978, the Court of Appeals rendered an opinion upholding the surcharge on non-residents, stating that there was a rational basis for the surcharge and that the distinction based on residency was valid. More specifically, the Court of Appeals stated:

> "There is a substantial relationship between the resident/non-resident distinction and the differing rates. Plaintiff's Complaint only challenged the validity of a surcharge based on residency. But residency requirements, standing alone, are not a denial of Equal Protection. See *Vlandis* v *Kline*, 412 US 441; 93 Sup. Ct. 2230; 37 Law ed 2d 63 (1973). Plaintiff's belated attempt to expand the challenge comes too late."

[Note: In his jurisdictional statement (p. 5), Appellant failed to quote or recognize the above quoted last sentence of the Court of Appeals' opinion].

Appellant sought leave to appeal to the Michigan Supreme Court, contending that the surcharge imposed on non-resident patients treated and cared for at any one of the hospitals operated by PEOPLES COMMUNITY HOSPITAL AUTHORITY was a violation of the Equal Protection Clause. Leave to appeal was denied by the Michigan Supreme Court on April 5, 1978.

II.

ARGUMENT

A. QUESTIONS NUMBER ONE AND FOUR PRESENTED IN APPELLANT'S JURISDICTIONAL STATEMENT SHOULD NOT BE CONSIDERED BY THIS COURT BECAUSE OF IMPROPER PRESENTATION OF THESE QUESTIONS IN THE STATE COURT.

A State procedural rule which forbids the raising of federal questions in late stages of the case, or by any other than prescribed methods, has been recognized as a valid exercise of State power. *William* v *Georgia*, 349 US 375, 382-3 (1954). A litigant must follow the State court procedure in raising federal questions. Failure to do so may prove fatal in the United States Supreme Court. *In re Lamkin*, 355 US 59 (1957); *Ferguson* v *Georgia*, 365 US 570, 572 (1961).

Where a reasonable state procedural requirement has not been observed, this Court has decreed it will decline jurisdiction where the highest State Court expressly refuses to decide the federal question for procedural reasons. *Penn Railroad Company* v *Illinois Brick Company*, 297 US 447, 462-3 (1935).

In the case at bar, Appellant's Complaint pleaded:

> "That charging said surcharge of persons who are not residents of the communities constituting the Defendant is an arbitrary classification depriving said persons of equal protection of the laws in violation of the Constitution of the United States and Michigan."

This pleading raises a question of the validity of the resident/non-resident distinction with respect to the surcharge, and nothing more.

Question number two presented in the Jurisdictional Statement was not pleaded in the Complaint. The claim that medical care is a fundamental interest was first alluded to in Appellant's brief filed in support of his Motion for Summary Judgment. It was not advanced in his Motion for Rehearing and Appellant did not raise it in his reasons and grounds for appeal filed with the Michigan Court of Appeals.

Question number four presented in the Jurisdictional Statement was not pleaded in the Complaint. It was not briefed or raised in Appellant's Motion for Summary Judgment. The trial judge, in ruling on the Motions for Summary Judgment, stated that there was a rational basis for the surcharge predicated upon non-residency so long as the non-resident does not own property within a participating community.

The trial judge then, by way of dicta, added:

> "However, if a non-resident does own property within the area and is a property taxpayer, a question may then arise whether the subject classification treats alike all persons of the same class. The Plaintiff here, however, has not claimed that he is a non-resident owner of property within one of the communities of the Hospital Authority that would be subject to millage tax. Accordingly, whether all persons of the same class of non-residents are affected alike from a constitutional standpoint need not be decided by this court".

This comment by the trial judge triggered Appellant's contention that he should be permitted to represent non-resident property owners who have paid the surcharge. There is no allegation or factual pleading that any non-resident property owners paid any surcharge.

The Michigan Appellate Courts will not consider a claim of deprivation of equal protection of the laws (or other constitutional issues) where no facts have been pleaded to support such claim. *Wayne County* v *State Department of Social Welfare*, 343 Mich 475, 480, 72 NW 2d 200 (1955); (wherein the Michigan Supreme Court refused to consider the claim of deprivation of equal protection of laws for lack of pleadings to support such); *Frigid Food Products, Inc.* v *City of Detroit*, 31 Mich App 402, 405, 187 NW 2d 916 (1971), (wherein the plaintiff tried to challenge the constitutionality of a Michigan statute for the first time at pre-trial conference over objections by the defendant. The Michigan Appellate Court refused to entertain the constitutional questions which had not been raised in the pleadings and had been withdrawn by plaintiff at pre-trial due to the defendant's objections to tardiness of plaintiff's action). See also *Falk* v *Civil Service Commission of Macomb County*, 57 Mich App 134, 137, 225 NW 2d 713, leave to appeal denied, 394 Mich 819 (1975).

The Michigan Court of Appeals in the present case refused to address any issue other than the issue of the validity of the resident/non-resident distinction with respect to the surcharge. It expressly stated that all attempts by Appellant to expand that issue "comes too late" (page 2 of Court of Appeals' Opinion). The Michigan Supreme Court agreed with this opinion by refusing to grant leave to appeal.

In the Complaint, Appellant pleaded only that he was a non-resident who was assessed a surcharge because of that status. Regarding medical care as a fundamental right, Appellant never pleaded facts to show that he or any other person had been denied medical care. With respect to standing to represent non-resident property owners, he never pleaded facts establishing their existence as a group and more importantly, he never qualified himself as one belonging to that group.

Questions one and four of Appellant's Jurisdictional Statement have been decided on adequate non-federal grounds — failure to follow reasonable state procedural grounds. Therefore, this Court should decline jurisdiction to review these issues.

Further, Appellant, in his Jurisdictional Statement, has made no effort to specify, as required by the Supreme Court Rule 15(1)(d), ". . . . the stage in the proceedings in the court of first instance, and in the appellate court at which, and in the manner in which the federal questions sought to be reviewed were raised, the method of raising them . . . and the way in which they were passed upon by the court."

B. QUESTION THREE PRESENTED IN APPELLANT'S JURISDICTIONAL STATEMENT SHOULD NOT BE CONSIDERED BY THIS COURT BECAUE IT WAS NEVER RAISED IN THE STATE COURTS BELOW.

This Court on several occasions has declined jurisdiction to review a federal question which has been raised for the first time in the notice of appeal to the United States Supreme Court in the Jurisdictional Statement filed with the Court. These papers are not

part of the record of state court proceedings, and it is that record which must affirmatively show a raising of the federal issue. *White River Lumber Co.* v. *Arkansas*, 279 US 692, 700 (1928); *Whitney* v. *California* 274 US 357, 362-3 (1926); *Raley* v. *Ohio*, 360 US 423, 434-6 (1959); *Cardinale* v *Louisiana*, 394 US 437, 438 (1969).

In the present case, Appellant never raised the issue of Due Process in the State courts. Again, Appellant has not specified in his Jurisdictional Statement the stage in the proceedings in the court of first instance, and in the Appellate Court at which the alleged federal questions were raised and passed upon as required by the Supreme Court Rule 15(1)(d).

C. QUESTION NUMBER TWO OF APPELLANT'S JURISDICTIONAL STATEMENT REGARDING THE RESIDENT/NON-RESIDENT CLASSIFICATION AS BEING ARBITRARY AND DISCRIMINATORY IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DISCUSSED BY THIS COURT.

Appellant in his Complaint raised the validity of charging non-residents of participating communities a surcharge, while residents of such communities are not so charged. Thus, the equal protection question he raised is whether residency requirements are arbitrary and discriminatory in determining who pays the surcharge. This is the thrust of question number two in his Jurisdictional Statement.

In discussing the equal protection clause question, some benchmarks should be set forth. The rights

protected by the Michigan Constitution are the same as those protected by the 14th Amendment to the Federal Constitution, *Fox* v. *Michigan Employment Security Commission*, 379 Mich 579, 588, 153 NW 2d 644 (1967). The United States Supreme Court clearly set forth the rules applicable to equal protection cases in *McGowan* v. *Maryland*, 366 US 420 (1961) where at pp. 425, 426 it said:

> "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A Statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. (Citing cases)."

In applying the Equal Protection Clause of the United States Constitution, the Supreme Court has consistently recognized that the 14th Amendment does not deny to states the power to treat different classes of persons in different ways. Classification must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of legislation, so that all persons similarly circumstanced shall be treated alike. *Reed* v. *Reed*, 404 US 71 (1971).

Appellant has not attacked the Appellee's method of determining residency as unreasonable. His claim is that the mere classification of resident/non-resident itself impinges on the Equal Protection Clause, a theory backed by no statutory or case law authority.

This Court has stated that residency requirements, standing alone, do not violate the Equal Protection Clause of the United States. In *Vlandis* v. *Kline*, 412 US 441, 453-4 (1973), the Court stated, with respect to higher college tuition for non-resident students:

> "We fully recognize that a state has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis."

The case at bar is quite analogous to the preferential tuition situation in *Vlandis, supra*. Appellee, PEOPLES COMMUNITY HOSPITAL AUTHORITY, has been organized pursuant to state statute. There are now 24 member communities. It is the property taxes of the residents of these communities that help support the operation of its hospitals and the high quality of medical care made available to its communities. Appellee's position is supported by the assessment of the issue made by the Michigan Attorney General and adopted by the Michigan Court of Appeals. (Appellant's Appendix B, pp 6a, 7a):

> "The rational basis for surcharging non-resident patients can be found in 1945 PA 47, supra, § 4 and § 7. These Sections authorize

> cities and townships and villages composing the hospital authorities to levy taxes on their property to fund the construction and operation of the Hospital Authority. Non-resident patients are not subject to these taxes. Thus, the surcharge requires non-resident patients to pay an amount which more closely approximates the true cost of services. To provide service at the same rate to both residents and non-residents would constitute a subsidy for non-residents at the expense of the residents." OAG 5105, October 5, 1976.

The Michigan Trial Court, Court of Appeals, and Supreme Court have all agreed that the rational basis for the resident/non-resident distinction exists. The classification is not arbitrary or invidious. *Avery* v. *Midland County, Texas*, 390 US 474 (1968). In an analogous situation in *Vlandis, supra*, this Court has agreed that the state has a legitimate interest in classifying students into resident/non-resident groups for purposes of charging higher tuition to the latter group.

Therefore, the Supreme Court having recently addressed this issue and having upheld the resident/non-resident distinction, there remains no substantial fundamental question to be reviewed by this Court.

CONCLUSION

WHEREFORE, Appellee respectfully submits that questions one, three and four presented in Appellant's Jurisdictional Statement were improperly presented in the Michigan State Court below, and that question number two is so unsubstantial as not to need further argument. These four questions being the only ones on which this cause depends, Appellee respectfully moves this Court to dismiss this appeal.

Respectfully submitted,

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